IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

SATURDAY, THE 1ST DECEMBER 2007 / 10TH AGRAHAYANA 1929

CRL.A.No. 45 of 2001

CC.418/1998 of CHIEF JUDICIAL MAGISTRATE COURT, THODUPUZHA

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APPELLANT:

REJEESH V.S.,
VALIYAMTHOTTATHIL HOUSE
KUDAYATHOOR P.O.
THODUPUZHA

BY ADV. SRI.P.K.ABOOBACKER(EDAPPALLY)

RESPONDENTS:

1. JOSE.T.J.
THENGUMPILLIL
MULAPPURAM-P.O., KARIMANNOOR
NOW RESIDING AT THENGUMPILLIL HOUSE
MUNDANMUDI-P.O., VANNAPPURAM VILLAGE
THODUPUZHA

2. STATE OF KERALA REP. BY PUBLIC PROSECUTOR

BY ADV. SRI.JOICE GEORGE
PUBLIC PROSECUTOR SRI.C.K.SURESH

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 03/12/2007, THE COURT ON 01/12/2007 DELIVERED THE FOLLOWING:

CRL.A.No. 45 of 2001

ORDER ON CRL.M.P.NO.417 OF 2001 IN CRL.A.45 OF 2001

Dismissed.

SD/- A.K.BASHEER

A.K.BASHEER, J.

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Crl.A.No.45 OF 2001

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Dated this the 1st day of December 2007

JUDGMENT

Appellant is the complainant in a prosecution under Section 138 of the Negotiable Instruments Act. The case of the appellant/complainant was that Ext.P1 cheque issued by the respondent for a sum of Rs.80,000/- in discharge of a legally dischargeable debt was dishonoured due to insufficiency of funds in his account, when presented for encashment. Though a statutory notice was issued by the complainant, the respondent had failed to repay the amount. Hence the complaint.

2. The defence set up by the respondent was that he did not owe any money to the complainant. He had never borrowed Rs.80,000/- as alleged. In fact he had taken a loan from Pulimoottil Credit Corporation by pledging his autorikshaw. At that time, he had handed over a signed blank cheque to the Corporation as security for the loan. The complainant who was an employee of the Corporation had somehow managed to get hold of the said cheque and misused it for the purpose of

launching the prosecution.

3. Before the trial court the complainant was examined as PW1 and Exts.P1 to P5 were marked on his side. There was no oral or documentary evidence on the side of the accused. The learned Magistrate held that the complainant had not succeeded in establishing that he had the financial capacity to advance such a huge sum to the accused. It was further found that the complainant had failed to prove that the cheque was supported by consideration and that it was executed in discharge of the alleged debt. The learned Magistrate further held that the complainant was not a reliable person since he had described his vocation as agriculture in the first page of the deposition sheet whereas while examined in court he had admitted that he was working as an Office Assistant in a local petrol bunk. The learned Magistrate after acquitting the accused had proceeded against the complainant under Section 250 of the Code of Criminal Procedure and ordered him to pay a sum of Rs.3,000/- as compensation to the accused. The said order is also under challenge in this appeal.

4. It is pertinent to note that accused had no case that Ext.P1 cheque did not bear his signature. In other words, the accused admitted that the cheque in question was issued by him. According to the accused, it was the blank signed cheque leaf which he had handed over to Pulimoottil Credit Corporation at the time when he had availed of a loan of Rs.20,000/- by pledging his autorikshaw. (However, in the 313 statement the accused had stated that he had taken a loan of Rs.10,000/- from the Corporation). The case of the accused was that the complainant was an employee of the Corporation and he might have got hold of the blank cheque leaf and misused it for launching the prosecution.

5. The learned Magistrate is seen to have accepted the above contention even in the absence of an iota of evidence in this regard. The specific case of the complainant was that he was working as Office Assistant in a local petrol bunk. If at all the accused had a specific case that the complainant was an employee of the Corporation, nothing prevented him from attempting to prove the same. Further, it cannot be believed that

the document which was presented or produced by a loanee before a financial institution would have been so easily obtained by an employee with such impunity. Therefore, the learned Magistrate had fallen in grave error in accepting the version given by the accused in respect of Ext.P1 cheque without any satisfactory corroborative evidence.

6. The other reasoning of the learned Magistrate to discard the case of the complainant is that the complainant had not adduced any evidence to show that he had had financial capacity to advance Rs.80,000/- to the accused. I am afraid the above view taken by the learned Magistrate is wholly irrelevant and unsustainable. The presumption available under Section 118 and 139 ought to have been kept in view while considering the fact that the accused himself had admitted his signature in the cheque. More importantly the accused had failed to discharge the burden cast upon him in any manner known to law.

7. The other ground on which the learned Magistrate has chosen to disbelieve the complainant is that there were contradictions in the complaint with regard to the entries in the

cheque. In the complaint, PW1 had stated that the accused had delivered a cheque dated May 28, 1998 for a sum of Rs.80,000/- drawn on Thodupuzha Urban Service Co-operative Bank Limited. It is true that he averred in the complaint that the cheque was written, signed and delivered to him by the accused. But when he was examined before the court as PW1, the complainant had stated that the accused had prepared the cheque in advance and that he had not written anything in his presence. He had just delivered the cheque which had already been written up. These statements in the depositions had been construed by the learned Magistrate to mean that it was at variance from what the complainant had stated in the complaint.

8. I am afraid the above view taken by the learned Magistrate is totally unsustainable. I refrain from making any further observation with regard to the merit of the rival contentions of the parties. In any view of the matter, I have no hesitation to hold that acquittal of the accused on the ground mentioned above is totally unsustainable. Therefore, the judgment is set aside. The case is remanded back to the court

below for fresh disposal in accordance with law.

The parties shall appear before the court below on January 28, 2008. Learned Magistrate shall dispose of the case as early as possible, at any rate, within three months from the date of receipt of a copy of this judgment. Registry shall send back the records to the court below forthwith. Since I have already set aside the judgment, the order directing the complainant to pay compensation will also stand set aside.

(A.K.BASHEER, JUDGE)

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